

The partial implementation of the 4th AML Register in Luxembourg

Directive 2015/849 of the European parliament and of the council of 20 May 2015 (the “**Fourth AML Directive**”) was substantially implemented in Luxembourg by means of the law of 13 February 2018 which amends the law of 12 November 2004 on the fight against money laundering (the “**AML Law**”). Please note that the implementation of the register of beneficial owners for companies and trusts is still pending. This brief overview introduces some of the main changes.

1. The scope of application of the AML Law Article 2 of the AML law applies to all professionals in Luxembourg and encompasses:

- Banks
- Professional of the Financial Sector
- Pension funds;
- Insurance companies;
- Auditors;
- Accountants;
- Tax advisors;
- Notaries;
- Lawyers;
- Trusts and fiduciaries;
- Real estate agents;
- Traders in goods making or receiving cash payments more than EUR 10,000. -
- Providers of gambling services;
- Court bailiffs in public auctions;

2. Key changes introduced

2.2 Beneficial Ownership The definition of beneficial owner has been updated. It refers to the individual on whose behalf the transaction is carried or the individual that ultimately owns or controls the client having regards to all facts and circumstances and considering that a sufficient threshold of ownership in the shares or control of voting rights of the company is held.

Beneficial ownership for companies refers to

- A shareholding more than 25% in the shares of a company, it being understood that the threshold is merely an indication of beneficial ownership; or
- The senior managing official of the company after the exhaustion of all available means and absent any ground of suspicion, where no beneficial owner is identified or if there would be some doubts that the identified persons would be the beneficial owners.

2.3 Extension of the definition of a Political Exposed Person (“PEP”) A PEP now includes directors and members of the board of an international organization in addition to the brother and sisters as family members of a PEP. The distinction between domestic and foreign PEP has also been removed in the application of enhanced due diligence measures with respect to transactions and business relationship involving PEPs.

2.4 Risk assessment and implementation of internal controls The professionals should perform a risk assessment of their clients having regard to certain risk factors such as the activity of their clients, the countries or geographic areas, the products, services, transactions or delivery channels. The professional assessment must be documented and be readily available for the competent authorities in order to demonstrate that measures commensurate to the risk factors are taken. The AML Law provides a non-

exhaustive risk factor list to consider. The professionals under the scope of the AML law must implement policies and procedures in order to monitor and manage the risk factors. They must implement group wide policies and allow their employees to report internally any breaches through an independent anonymous manner. **2.5 Sanctions** The administrative sanctions can range from a simple warning to the public disclosure of the name of individual or company that has breached the AML law, the withdrawal of the professional authorization or the imposition of a temporary ban on the exercise of the professional activity for less than five years or the prohibition to serve in a managerial capacity for any professionals listed under article 2-1 of the AML Law. Administrative sanctions and fines may be imposed by authorities for a maximum of EUR 5,000,000.- or 10 % of the total annual turnover based on the latest published accounts for banks and financial institutions. Individuals may also be subject to a maximum fine of EUR 5,000,000. The criminal sanctions have also increased with fines ranging from EUR 12,500.- to EUR 5,000,000.-. **Me Sonia Bellamine**